

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MARCH 1997 SESSION

<p>FILED</p> <p>March 27, 1997</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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JIMMY LEE KEY,)
Appellant,) C.C.A. No. 03C01-9509-CC-00277
V.) Knox County
) Honorable Mary Beth Leibowitz, Judge
STATE OF TENNESSEE,) (Post-conviction)
Appellee.)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
 Judge

OPINION

In 1969, the appellant, Jimmy Lee Key, pled guilty to seven counts of theft and burglary. In June 1992, he filed a petition for post-conviction relief alleging ineffective assistance of counsel. The petition was dismissed because the statute of limitations had expired. He appeals alleging that his claim of ineffective assistance of counsel falls within the Burford exception to the statute of limitations.¹

The appellant argues that in 1969 he was never informed of the enhancement possibilities of his guilty pleas.² He claims that the constitutional right to be informed of the enhancement possibilities of his plea was created or became recognized after the statute of limitations for post-conviction relief had expired. Therefore, he contends that his situation is analogous to Burford and should allow him to file an untimely petition. We disagree.

Only violations of the United States or Tennessee Constitution can form the basis of relief in post-conviction cases. Tenn. Code Ann. § 40-30-105 (1991 Repl.) This Court has noted on numerous occasions that those rights enumerated in Mackey v. State, 553 S.W.2d 337 (Tenn. 1977),³ including the right to be informed of the enhancement possibilities of one's plea, are not constitutional in nature. Therefore, they are inappropriate for post-conviction relief. State v. Newsome, 778 S.W.2d 34 (Tenn. 1989); Housler v. State, 749 S.W.2d 758, 761 (Tenn. Crim. App. 1988).

¹In Burford v. State, 845 S.W.2d 204 (Tenn. 1992), the Tennessee Supreme Court created an exception to the three year statute of limitations for post-conviction relief. Those petitions based on constitutional grounds not recognized or not available to petitioners prior to the running of their limitations period are not barred from filing the petition.

²In 1976, the appellant was convicted of another crime. The 1969 convictions were used to adjudicate him as a habitual criminal.

³In Mackey, the Tennessee Supreme Court expanded upon the directives provided in Boykin v. Alabama, 395 U.S. 238 (1969). In addition to the Boykin litany, the trial judge must apprise defendants of the future enhancement possibilities of their guilty pleas.

The state takes the position that the appellant's petition is time barred and the Burford exception is inapplicable. The appellant concedes that his petition has been filed well outside the limitations period. We agree with the state's position. We affirm the judgment dismissing this petition.

PAUL G. SUMMERS, Judge

CONCUR:

JOHN H. PEAY, Judge

CORNELIA A. CLARK, Special Judge